

By: Carona
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S.B. No. 1090

A BILL TO BE ENTITLED

AN ACT

relating to the manufacture, distribution, sale, and provision of
alcoholic beverages and the regulation of those activities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.04, Alcoholic Beverage Code, is
amended by amending Subdivision (15) and adding Subdivision (26) to
read as follows:

(15) "Beer" means a malt beverage containing one-half
of one percent or more of alcohol by volume and not more than four
percent of alcohol by weight~~[, and does not include a beverage
designated by label or otherwise by a name other than beer]~~.

(26) "Criminal negligence" has the meaning assigned by
Section 6.03, Penal Code.

SECTION 2. Section 5.11, Alcoholic Beverage Code, is
amended to read as follows:

Sec. 5.11. ADMINISTRATOR. (a) The commission shall
appoint an administrator to serve at its will and, subject to its
supervision, administer this code. Unless the commission orders
otherwise, the administrator shall be manager, secretary, and
custodian of all records. The administrator shall devote the
administrator's ~~[his]~~ entire time to the office and shall receive a
salary as appropriated by the legislature.

(b) The administrator is also known as the executive
director.

SECTION 3. Section 5.13, Alcoholic Beverage Code, is amended to read as follows:

Sec. 5.13. ASSISTANT ADMINISTRATOR. (a) The administrator shall appoint an assistant administrator. The assistant administrator must meet the same qualifications as the administrator. The assistant administrator shall take the constitutional oath of office. In the absence of the administrator, or in case of the administrator's ~~his~~ inability to act, the assistant administrator shall perform the duties conferred on the administrator by law or delegated to the administrator by the commission. If there is a vacancy in the office of administrator, the assistant administrator shall perform the duties of the administrator until an administrator has been appointed by the commission. At other times the assistant administrator ~~he~~ shall perform those duties and have those functions, powers, and authority as may be delegated to the assistant administrator ~~him~~ by the administrator.

(b) The assistant administrator is also known as the deputy executive director.

SECTION 4. Section 5.15, Alcoholic Beverage Code, is amended to read as follows:

Sec. 5.15. ASSISTANT ATTORNEYS GENERAL. The attorney general may ~~shall~~ appoint as many as six assistant attorneys general, as the commission determines necessary, to enable the commission to more efficiently enforce this code. The attorney general and the assistant attorneys general shall prosecute all suits requested by the commission and defend all suits against the

1 commission. The commission shall provide the assistant attorneys
2 general with necessary stenographers and office space. The
3 assistant attorneys general shall be paid by the commission out of
4 funds appropriated to it for the administration of this code. Their
5 compensation shall be on the same basis as assistant attorneys
6 general devoting their time to general state business.

7 SECTION 5. Section 5.32, Alcoholic Beverage Code, is
8 amended to read as follows:

9 Sec. 5.32. MAY REQUIRE REPORTS. The commission may require
10 ~~[the filing of reports and other data by]~~ persons engaged in the
11 alcoholic beverage business to provide information, records, or
12 other documents ~~[which]~~ the commission finds necessary to
13 accomplish the purposes of this code.

14 SECTION 6. Section 11.72, Alcoholic Beverage Code, is
15 amended to read as follows:

16 Sec. 11.72. DISCIPLINE FOR ACTIONS OF AGENT. The
17 commission or administrator may suspend or revoke the permit of a
18 person who is represented by the holder of an agent's permit as
19 described by Section 35.01 or a manufacturer's agent's permit as
20 described by Section 36.01 or otherwise discipline the person based
21 on an act or omission of the holder of an agent's or manufacturer's
22 agent's permit only if an individual employed by the person in a
23 supervisory position:

24 (1) was directly involved in the act or omission of the
25 holder of an agent's or manufacturer's agent's permit;

26 (2) had notice or knowledge of the act or omission; or

27 (3) failed to take reasonable steps to prevent the act

or omission.

SECTION 7. Subsection (a), Section 16.01, Alcoholic Beverage Code, is amended to read as follows:

(a) Except as provided by Section 16.011, the holder of a winery permit may:

(1) manufacture, bottle, label, and package wine containing not more than 24 percent alcohol by volume;

(2) manufacture fruit brandy and:

(A) use that brandy on the winery permit holder's permitted premises for fortifying purposes only; or

(B) sell that brandy to other winery permit holders;

(3) import or buy fruit brandy from a permit holder authorized to manufacture fruit brandy and use that brandy on the winery permit holder's permitted premises for fortifying purposes only;

(4) sell wine in this state to or buy wine from permit holders authorized to purchase and sell wine, including holders of wholesaler's permits, winery permits, and wine bottler's permits;

(5) sell wine to ultimate consumers:

(A) for consumption on the winery premises; or

(B) in unbroken packages for off-premises consumption in an amount not to exceed 35,000 gallons annually;

(6) sell the wine outside this state to qualified persons;

(7) blend wines; ~~and~~

(8) dispense free wine for consumption on the winery

1 premises; and

2 (9) purchase and import wine from the holder of a
3 nonresident seller's permit.

4 SECTION 8. Section 16.03, Alcoholic Beverage Code, is
5 amended to read as follows:

6 Sec. 16.03. IMPORTATION FOR BLENDING. The holder of a
7 winery permit may, for blending purposes [~~only~~], import wines or
8 grape brandy. The wine or grape brandy may be purchased only from
9 the holders of nonresident seller's permits. The state tax on wines
10 imported for blending purposes does not accrue until the wine has
11 been used for blending purposes and the resultant product placed in
12 containers for sale.

13 SECTION 9. Subsection (a), Section 26.01, Alcoholic
14 Beverage Code, is amended to read as follows:

15 (a) The holder of a wine and beer retailer's off-premise
16 permit may sell for off-premises consumption only, in unbroken
17 original containers, but not for resale, wine, beer, and malt
18 liquors containing alcohol in excess of one-half of one percent by
19 volume but not more than 17 percent by volume.

20 SECTION 10. Chapter 35, Alcoholic Beverage Code, is amended
21 by adding Section 35.08 to read as follows:

22 Sec. 35.08. GRACE PERIOD. A person may engage in the
23 activities specified in Section 35.01 for an initial grace period
24 of five days during which the person shall procure an agent's permit
25 from the commission.

26 SECTION 11. Chapter 36, Alcoholic Beverage Code, is amended
27 by adding Section 36.09 to read as follows:

1 Sec. 36.09. GRACE PERIOD. A person may engage in the
2 activities specified in Section 36.01 for an initial grace period
3 of five days during which the person shall procure a manufacturer's
4 agent's permit from the commission.

5 SECTION 12. Section 45.01, Alcoholic Beverage Code, is
6 amended to read as follows:

7 Sec. 45.01. AUTHORIZED ACTIVITIES. The holder of a storage
8 permit may store liquor in a public bonded warehouse for which a
9 permit has been issued or in a private warehouse owned or leased by
10 the holder and operated by the holder.

11 SECTION 13. Section 51.09, Alcoholic Beverage Code, is
12 amended to read as follows:

13 Sec. 51.09. COIN-OPERATED MACHINES PROHIBITED. Nothing in
14 this chapter shall be construed as authorizing nor may the
15 commission or administrator authorize the sale of any alcoholic
16 beverage from a coin-operated machine or similar device operated by
17 the consumer.

18 SECTION 14. Section 61.38, Alcoholic Beverage Code, is
19 amended to read as follows:

20 Sec. 61.38. NOTICE OF APPLICATION. (a) Every original
21 applicant [~~When an application~~] for a license to manufacture, ~~[or]~~
22 ~~distribute, or [beer is filed, the county clerk shall post at the~~
23 ~~courthouse door a written notice containing the substance of the~~
24 ~~application and the date set for hearing.~~

25 ~~[(b) When an original application to sell beer at retail at~~
26 ~~a location previously licensed is filed, the county clerk shall~~
27 ~~post at the courthouse door a written notice containing the~~

~~substance of the application and the date set for hearing.~~

~~[(c) When an original application to] sell beer at retail shall give notice of the application by publication at the applicant's own expense in [at a location not previously licensed is filed, the county clerk shall publish notice for] two consecutive issues of [in] a newspaper of general circulation published in the city or town in which the applicant's place of business is [to be] located. If no newspaper [of general circulation] is published in that city or town, the notice must [shall] be published in a newspaper of general circulation published in the county where the applicant's business is [to be] located. If no newspaper [of general circulation] is published in that county, the notice must [shall] be published in a qualified newspaper [which is] published in the closest neighboring county and [is] circulated in the county where the applicant's business is located [license is sought].~~

~~(b) The notice must [shall] be printed in 10-point boldface type and must include:~~

- ~~(1) [shall set forth] the type of license applied for;~~
- ~~(2) the exact location of the business for which the license is sought;~~
- ~~(3) the name of each [the] owner of the business and, if the business is operated under an assumed name, [or owners,] the trade name together with the name of each owner [if operating under an assumed name]; and~~
- ~~(4) if [in] the [case of a corporate] applicant is a corporation, the names and titles of all officers [of the~~

1 ~~corporation~~].

2 (c) An applicant for a renewal license is not required to
3 publish notice. ~~[At the time the application is filed, the~~
4 ~~applicant shall deposit with the clerk the cost of publishing~~
5 ~~notice, which the clerk shall use to pay for the publication.]~~

6 SECTION 15. Subsection (g), Section 102.07, Alcoholic
7 Beverage Code, is amended to read as follows:

8 (g) Subsection (a) does not prohibit a permittee covered
9 under Subsection (a) from prearranging or preannouncing a
10 promotional activity otherwise permitted by this code with a
11 retailer about a promotional activity to be held on the retailer's
12 premises. ~~[A holder of a wholesaler's or class B wholesaler's permit~~
13 ~~may prearrange a promotional activity only for distilled spirits or~~
14 ~~wine.]~~ Notwithstanding any other provision, a permittee may:

15 (1) preannounce a promotion to a consumer; or

16 (2) preannounce the purchase of wine, ~~or~~ ale, or malt liquor to a consumer.
17

18 SECTION 16. Section 102.15, Alcoholic Beverage Code, is
19 amended to read as follows:

20 Sec. 102.15. MANUFACTURER OR DISTRIBUTOR: PROHIBITED
21 DEALINGS WITH RETAILER. (a) Except as provided by Subsection (b),
22 no ~~[No]~~ manufacturer or distributor directly or indirectly, or
23 through a subsidiary, affiliate, agent, employee, officer,
24 director, or firm member, may:

25 (1) furnish, give, or lend any money or other thing of
26 value to a person engaged or about to be engaged in selling brewery
27 products for on-premises or off-premises consumption, or give the

1 person any money or thing of value for his use, benefit, or relief;
2 or

3 (2) guarantee the repayment of a loan or the
4 fulfillment of a financial obligation of a person engaged in or
5 about to be engaged in selling beer at retail.

6 (b) Subsection (a) does not prohibit a manufacturer or
7 distributor from prearranging or preannouncing a promotional
8 activity otherwise permitted by this code with a retailer about a
9 promotional activity to be held on the retailer's premises.
10 Notwithstanding any other provision, a manufacturer or distributor
11 may:

12 (1) preannounce a promotion to a consumer; or

13 (2) preannounce the purchase of beer to a consumer.

14 SECTION 17. Section 104.04, Alcoholic Beverage Code, is
15 amended to read as follows:

16 Sec. 104.04. DRAFT MALT BEVERAGE [~~BEER~~] DISPENSER: SIGN
17 REQUIRED. No retail dealer may dispense draft beer, malt liquor, or
18 ale unless each faucet or other dispensing apparatus is equipped
19 with a sign clearly indicating the name or brand of the product
20 being dispensed through the faucet or apparatus. The sign must be
21 in full sight of the purchaser, and the letters on it must be
22 legible.

23 SECTION 18. Subsection (d), Section 106.09, Alcoholic
24 Beverage Code, is amended to read as follows:

25 (d) The fact that a person is 18, 19, or 20 years of age is
26 not a ground for refusal of an original or renewal permit or license
27 issued under Chapter 35, 36, or 73 [~~of this code~~], provided that

1 such a person to whom a permit or license is issued may carry out the
2 activities authorized by those chapters only while in the actual
3 course and scope of the person's employment.

4 SECTION 19. Subsection (a), Section 108.01, Alcoholic
5 Beverage Code, is amended to read as follows:

6 (a) No manufacturer or distributor directly or indirectly,
7 or through a subsidiary, affiliate, agent, employee, officer,
8 director, or firm member, may publish, disseminate, or cause to be
9 published or disseminated by any medium enumerated in Subsection

10 (b) ~~[of this section]~~ an advertisement of a brewery product that:

11 (1) causes or is reasonably calculated to cause
12 deception of the consumer with respect to the product advertised;

13 (2) directly or by ambiguity, omission, or inference
14 tends to create a misleading impression;

15 (3) is untrue in any particular;

16 (4) ~~[refers to the alcohol content of the product,~~

17 ~~(5)]~~ disparages a competitor's product; or

18 (5) ~~(6)]~~ is obscene or indecent.

19 SECTION 20. Section 108.09, Alcoholic Beverage Code, is
20 amended to read as follows:

21 Sec. 108.09. ~~[CERTAIN]~~ ADVERTISING WHERE PRODUCT MAY BE
22 PURCHASED ~~[BY WINERY]~~. (a) Notwithstanding ~~[Section 102.07 or]~~
23 any other provision of this code, a member of the manufacturing or
24 wholesale tier ~~[winery]~~ may include information in its ~~[the~~
25 ~~winery's]~~ advertising that informs the public of where its ~~[the~~
26 ~~winery's]~~ products may be purchased.

27 (b) A member of the manufacturing tier ~~[winery]~~ may not give

1 compensation to or receive compensation from a licensed or
2 permitted member of the wholesale or retail tier for advertising
3 described by Subsection (a). A member of the wholesale tier may not
4 give compensation to or receive compensation from a licensed or
5 permitted member of the manufacturing or retail tier for
6 advertising described by Subsection (a).

7 SECTION 21. Section 201.02, Alcoholic Beverage Code, is
8 amended to read as follows:

9 Sec. 201.02. "FIRST SALE" DEFINED. In this subchapter,
10 "first sale":

11 (1) as applied to liquor imported into this state by
12 the holder of a wholesaler's permit authorizing importation, means
13 the first actual sale by the permittee to the holder of any other
14 permit authorizing the retail sale of the beverage or to the holder
15 of a local distributor's permit; and

16 (2) as applied to all other liquor, means the first
17 sale, possession, distribution, or use in this state, except that
18 the term does not include the first sale by:

19 (A) the holder of a winery permit to another
20 holder of a winery permit or the holder of a wholesaler's permit; or

21 (B) the holder of a distiller's and rectifier's
22 permit to the holder of a wholesaler's permit.

23 SECTION 22. Section 201.41, Alcoholic Beverage Code, is
24 amended to read as follows:

25 Sec. 201.41. FIRST SALE. In this subchapter, "first sale"
26 means:

27 (1) the first actual sale of ale or malt liquor by:

1 (A) the holder of a wholesaler's, general class B
2 wholesaler's, or local class B wholesaler's permit to:

3 (i) [~~(A)~~] a permittee authorized to sell to
4 ultimate consumers;

5 (ii) [~~(B)~~] a local distributor permittee;
6 or

7 (iii) [~~(C)~~] a private club registration
8 permittee; or

9 (B) a brewpub licensee to a consumer or a
10 permittee or licensee authorized to sell ale or malt liquor to
11 ultimate consumers; or

12 (2) the importation of ale or malt liquor under
13 Section 107.07 [~~of this code~~].

14 SECTION 23. Section 203.02, Alcoholic Beverage Code, is
15 amended to read as follows:

16 Sec. 203.02. "FIRST SALE". In this chapter, "first sale"
17 means:

18 (1) the first actual sale of beer:

19 (A) by the holder of a distributor's license or
20 by the holder of a manufacturer's license acting under the
21 authority of Section 62.12 [~~of this code~~], to:

22 (i) [~~(A)~~] a permittee or licensee
23 authorized to sell to ultimate consumers;

24 (ii) [~~(B)~~] a local distributor permittee;
25 or

26 (iii) [~~(C)~~] a private club registration
27 permittee; or

1 (B) by a brewpub licensee to a consumer or a
2 permittee or licensee authorized to sell beer to ultimate
3 consumers; or

4 (2) the importation of beer under Section 107.07 [~~of~~
5 ~~this code~~].

6 SECTION 24. The following provisions of the Alcoholic
7 Beverage Code are repealed:

8 (1) Section 1.08, as added by Chapter 437 (Senate Bill
9 No. 55), Acts of the 73rd Legislature, Regular Session, 1993;

10 (2) Section 1.08, as added by Chapter 934 (House Bill
11 No. 1445), Acts of the 73rd Legislature, Regular Session, 1993; and

12 (3) Section 31.05.

13 SECTION 25. This Act takes effect September 1, 2013.